



MISSOURI ETHICS COMMISSION
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James Klahr
Executive Director

February 10, 2017

Re: Advisory Opinion No. 2017.02.CF.004

Dear

At the February 10, 2017 meeting of the Missouri Ethics Commission, your request for an opinion was discussed.

Opinion

Pursuant to §105.955.16, RSMo, the Missouri Ethics Commission may issue a written opinion regarding any issue on which the Commission can receive a complaint pursuant to §105.957, RSMo. The Commission receives complaints alleging violation of campaign finance provisions of Missouri law. This opinion is issued within the context of Missouri's laws governing such issues, and assumes the facts presented by you in your letter.

The question presented is:

Can a candidate committee make an independent expenditure (not coordinated with any other committee and therefore not a contribution to any other committee) to support or oppose a candidate or ballot measure?

A candidate committee can make an expenditure to support a candidate or ballot measure if those expenditures were "not requested to be made by, directed or controlled by, or made in cooperation with, or made with the express or implied consent of the candidate."

Supporting Analysis

Article VIII, §23.3(4) provides a prohibition on candidate committee contributions as follows:

No candidate's candidate committee shall accept contributions from, or make contributions to, another candidate committee, including any candidate committee, or equivalent entity, established under federal law.

Article VIII, §23.3(12) prohibits political action committees/continuing committees from receiving contributions from candidate committees. Both "political action committees" as defined by §23.8(20) and "continuing committees" as defined by §23.8(6)(c) have the "primary or incidental purpose is to receive contributions or make expenditures to influence or attempt to influence the action of voters whether or not a particular candidate or candidates or a particular ballot measure or measures to be supported or opposed

has been determined at the time the committee is required to file any statement or report pursuant to the provisions of this chapter.”¹

§23.8(7) defines a “contribution” in pertinent part:

(7) "Contribution", a payment, gift, loan, advance, deposit, or donation of money or anything of value for the purpose of supporting or opposing the nomination or election of any candidate for public office or the qualification, passage or defeat of any ballot measure, ...

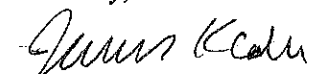
§23.8(12) defines an “expenditure” in pertinent part:

[a] payment, advance, conveyance, deposit, donation or contribution of money or anything of value for the purpose of supporting or opposing the nomination or election of any candidate for public office or the qualification or passage of any ballot measure ...

While the Missouri Constitution and Chapter 130 do not specifically refer to “independent expenditures”, the Commission has long given guidance that expenditures made by a candidate do not constitute contributions if those expenditures were “not requested to be made by, directed or controlled by, or made in cooperation with, or made with the express or implied consent of the candidate.” See MEC No. 1996.06.135, <http://mec.mo.gov/Scanned/PDF/Opinions/190.pdf>, MEC, No. 1996.01.110, <http://mec.mo.gov/Scanned/PDF/Opinions/178.pdf>, and MEC No. 2004.03.100, <http://mec.mo.gov/Scanned/PDF/Opinions/367.pdf>.²

§23.3(4) and, §23.3(12) place prohibitions on contributions and not expenditures by a candidate committee to other candidate committees and political action committees/continuing committees.³ Therefore, a candidate committee can make an expenditure to support a candidate or ballot measure if those expenditures were “not requested to be made by, directed or controlled by, or made in cooperation with, or made with the express or implied consent of the candidate.” For campaign finance reporting purposes, any committee that makes an expenditure in support or against a candidate or ballot measure must comply with §130.041.1(7), RSMo, by filing a direct expenditure report.

Sincerely,



James Klahr
Executive Director

¹ As noted in Commission opinion 2017.02.CF.002 the definitions of continuing and political action committees are substantially the same in §23.7. The Commission interprets these committees to be the same despite the fact that the constitutional provision refers to these committees in separate definitions. For the purposes of this Opinion, any references to either committee includes both.

² The definition of independent expenditure in the Commission’s prior opinions was drawn from *Buckley v. Valeo*, 424 U.S. 1 (1976). This Supreme Court reaffirmed this definition of independent expenditure in *Citizens United v. FEC*. See *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 360 (2010) (“By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate.” See *Buckley*, *supra*, at 46, 96 S.Ct. 612).

³ Art. VIII §23 does not contain prohibitions on candidate committee contributions to campaign committees.